

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONICA VIVIENNE RIOTT,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No. 1:21-cv-0678 JLT HBK

ORDER GRANTING MOTION FOR
ATTORNEY'S FEES

(Doc. 25)

ORDER DIRECTING THE CLERK OF
COURT TO MAIL A COPY OF THIS ORDER
TO PLAINTIFF

Jonathan O. Peña of Peña & Bromberg, PC, counsel for Plaintiff Monica Vivienne Riott, seeks attorney's fees pursuant to 42 U.S.C. § 406(b) on October 13, 2023. (Doc. 25.) Neither Plaintiff nor the Commissioner of Social Security have opposed the motion. For the reasons set forth below, the motion for attorney's fees is **GRANTED** in the amount of \$23,582.00, subject to an offset of \$6,500.00 in fees previously awarded under the Equal Access to Justice Act.

I. Relevant Background

Plaintiff entered into a "Fee Agreement- Federal Court SSI/ Social Security Disability" with Counsel on April 14, 2021. (Doc. 25-2 at 1-2.) In the agreement, Plaintiff indicated that if she was awarded any past-due / retroactive benefits, she would pay 25% of the amount awarded to Counsel. (*Id.* at 1.) Pursuant to the terms, Plaintiff agreed: "[M]y attorney has the right under this contract to ask the court to award as much as 25% of my past-due benefits for representing me in court. If the court awards an attorney fee out of my past-due benefits and also awards an

1 EAJA fee for that same work, my attorney must refund to me the smaller fee.” (*Id.*) In addition,
2 Plaintiff acknowledged the Social Security Administration would hold 25% of any past-due
3 benefits for the payment. (*Id.*)

4 On April 22, 2021, Plaintiff initiated this action seeking judicial review of an
5 administrative decision denying her claim for disability insurance benefits and supplemental
6 security income benefits under the Social Security Act. (Doc. 1.) On July 28, 2022, the Court
7 granted the parties’ stipulation to a voluntary remand pursuant to sentence four of 42 U.S.C. §
8 405(g). (Docs. 16, 18-19.) Following the entry of judgment in favor of Plaintiff, the Court
9 awarded \$6,500.00 in attorney fees under the Equal Access to Justice Act. (Docs. 23, 24).

10 Upon remand, the Commissioner found Plaintiff disabled beginning on August 17, 2012.
11 (Doc. 25-1). Plaintiff was awarded \$94,328.00 in retroactive benefits,¹ and the Administration
12 withheld \$23,582.00 for attorney’s fees. (*Id.* at 3.)

13 On October 13, 2023, Counsel filed this motion for attorney’s fees in the amount of
14 \$23,582.00, with an offset of \$6,500.00 for EAJA fees already awarded. (Doc. 25.) Counsel
15 indicated Plaintiff was served by U.S. mail with the motion, which contained a notice to Plaintiff
16 that any opposition was due within 14 days. (*Id.* at 2, 9.) To date, Plaintiff has not filed an
17 opposition, or otherwise responded to the motion for fees. The Commissioner “neither supports
18 nor opposes counsel’s request.” (Doc. 27 at 2.)

19 **II. Attorney Fees under § 406(b)**

20 Attorneys may seek a reasonable fee under the Social Security Act for cases in which they
21 have successfully represented social security claimants. Section 406(b) allows:

22 Whenever a court renders a judgment favorable to a claimant under
23 this subchapter who was represented before the court by an attorney,
24 the court may determine and allow as part of its judgment a reasonable
fee for such representation, not in excess of 25 percent of the total of
the past-due benefits to which the claimant is entitled ...

25 42 U.S.C. § 406(b)(1)(A). Counsel for a plaintiff may recover attorneys’ fees under both 42
26 U.S.C. § 406(b) and the EAJA. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002). However,

27
28 ¹ Plaintiff indicates this amount was calculated by multiplying the 25% of past due benefits amount by
four (\$23,582.00 x 4). (See Doc. 25 at 3; Doc. 25-1 at 3.)

1 counsel must refund to the plaintiff the amount of the smaller fee. *Id.*

2 Fees in Social Security cases “are usually set in contingency-fee agreements and are
3 payable from past-due benefits awarded to the claimant.” *Biggerstaff v. Saul*, 840 F. App’x 69, 70
4 (9th Cir. 2020); *see also Crawford v. Astrue*, 586. F.3d 1142, 1155 (9th Cir. 2009) (observing that
5 “virtually all attorneys charge a contingency fee” in Social Security cases). District courts “have
6 been deferential to the terms of contingency fee contracts § 406(b) cases.” *Hern v. Barnhart*, 262
7 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). Nevertheless, the Court must review contingent-fee
8 arrangements “as an independent check, to assure that they yield reasonable results in particular
9 cases.” *Gisbrecht*, 535 U.S. at 807.

10 In evaluating the reasonableness of a fee request, the Court should consider “the character
11 of the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. The
12 Court should also consider whether the attorney performed in a substandard manner or engaged in
13 dilatory conduct or excessive delays, and whether the fees are “excessively large in relation to the
14 benefits received.” *Crawford*, 586 F.3d at 1149. Importantly, a contingency fee agreement is
15 unenforceable if it provides for fees exceeding the statutory amount of 25 percent. *Gisbrecht*, 535
16 U.S. at 807 (“Congress has provided one boundary line: Agreements are unenforceable to the
17 extent that they provide for fees exceeding 25 percent of the past-due benefits.”); *see also*
18 *Crawford*, 586. F.3d at 1155 (“42 U.S.C. § 406(b) sets the maximum percentage that may be
19 charged for representing a claimant in district court at 25 percent of past benefits recovered”). The
20 burden is upon counsel to show the fees requested are reasonable. *Gisbrecht*, 535 U.S. at 807.

21 **III. Analysis**

22 Plaintiff signed a contingent fee agreement providing “[her] attorney shall charge and
23 receive as the fee an amount equal to twenty-five percent (25%) of the past-due benefits that are
24 awarded to my family and me in the event my case is won.” (Doc. 25-2 at 1.) Counsel accepted
25 the risk of loss in the action and expended a total of 31.5 hours while representing Plaintiff before
26 the District Court. (Doc. 25-3 at 1-2.) Tasks undertaken included reviewing the administrative
27 record, summarizing the medical evidence, legal research, and preparation of the opening brief.
28 (See *id.*) The time Counsel spent representing Plaintiff does not appear inflated.

1 Counsel was ultimately successful in securing \$94,328.00 in retroactive benefits for
2 Plaintiff. (Doc. 25-1 at 3.) For this, Counsel requests a fee of \$23,582.00, which is equal to the
3 25% of the past-due benefits withheld for fees. (Doc. 25 at 5.) Because \$6,500.00 was
4 previously approved under the EAJA, and Counsel will refund this amount, the net cost to
5 Plaintiff is \$17,082.00. (See Doc. 25 at 6.)

6 Significantly, there is no indication that counsel performed in a substandard manner or
7 engaged in severe dilatory conduct. Plaintiff secured a remand for payment of benefits following
8 the appeal, including an award of past-due benefits beginning December 2013. (Doc. 25-1 at 1.)
9 Finally, the fees requested do not exceed 25% maximum permitted under 42 U.S.C. §406(b) or
10 the amount agreed upon by counsel and Plaintiff. (*See* Doc. 25-2 at 1.) Plaintiff did not oppose
11 the request and thereby indicates an implicit belief that the total amount requested for attorney
12 fees is reasonable.

13 Counsel’s request for \$23,582.00 in fees for 31.5 hours of work results in an hourly rate of
14 \$748.63 for the attorney work. (Doc. 25 at 5.) Previously, the Ninth Circuit found similar hourly
15 rates reasonable in social security contingency fee arrangements. *Crawford*, 586 F.3d at 1153
16 (explaining that the majority opinion found reasonable effective hourly rates equaling \$519.00,
17 \$875.00, and \$902.00). More recently, this Court approved an hourly rate of \$1,025.22 for
18 paralegal and attorney time. *Mayfield v. Comm’r of Soc. Sec.*, No. 1:16-cv-01084-SAB, ECF No.
19 24, at 5 (E.D. Cal. March 19, 2020). Thus, the hourly rate does not weigh against a finding the
20 fees requested are reasonable.

21 || IV. Conclusion and Order

22 Based upon the tasks completed and results achieved following the remand for further
23 proceedings, the Court finds the fees sought by Counsel are reasonable. *Gisbrecht*, 535 U.S. at
24 807-08. However, an award of Section 406(b) fees must be offset by any prior award of
25 attorneys' fees granted under the EAJA. 28 U.S.C. § 2412(d); *Gisbrecht*, 535 U.S. 796. Because
26 Plaintiff was previously awarded \$6,500 in fees pursuant to the EAJA, Counsel shall refund this
27 amount to Plaintiff.

28 //

1 Accordingly, the Court **ORDERS**:

2 1. The motion for an award of attorney's fees (Doc. 25) is **GRANTED**.

3 2. Plaintiff's Counsel is **AWARDED** \$23,582.00 in attorney fees pursuant to 42

4 U.S.C. § 406(b).

5 3. The funds **SHALL** be paid to Counsel out of the funds withheld by the Social

6 Security Administration.

7 4. After payment of fees, any remaining funds being held by the Administration

8 **SHALL** be released to Plaintiff Monica Vivienne Riott.

9 5. Plaintiff's Counsel **SHALL** refund \$6,500.00 to Plaintiff as an offset for the EAJA

10 fees previously awarded pursuant to 28 U.S.C. § 2412(d).

11 6. The Clerk of Court is directed to serve a copy of this Order on Plaintiff Monica

12 Vivienne Riott, 29042 Sequoia Ct., Coarsegold, CA 93614.

13 IT IS SO ORDERED.

14 Dated: November 7, 2023


UNITED STATES DISTRICT JUDGE